



Soldiers and the Gun-Control Act

tive, which means it applies to even those convictions that occurred before the amendment was passed, even if they do not involve the use of a firearm.

The Domestic-Violence Issue

A domestic-violence judgment includes convictions for acts against a broad spectrum of people. It's not limited to spouses or children. The law includes violence against a former spouse, a parent or a guardian. And the act may be committed by someone with whom an individual shares a child in common; by someone who is cohabiting with or has cohabited with the individual as a spouse, parent or guardian; or by someone who is similarly situated to a spouse, parent or guardian.

What acts and convictions qualify under the law presents a serious set of issues for commanders and their staff judge advocates, who must determine whether

for an assignment. Performing assigned duties. Meeting the standards of weight control and physical fitness tests. Ensuring that personnel records are updated to reflect promotion points and professional development information. These are just some of the details that soldiers must pay attention to in order to successfully navigate their chosen career paths.

But sometimes that path may be blocked by an unforeseen obstacle. And in one case — a recent federal law known as the Lautenberg Amendment to the Gun Control Act of 1968 — that obstacle could be a landmine.

The new ruling makes it illegal for a person convicted of a domestic-violence crime to possess firearms or ammunition, however old the conviction may be.

Until 1996, as an exception to the original law, people employed at the federal or state levels, including the military, could carry government-issued firearms during the performance of their official duties, even if they had been convicted of a felony. But the Lautenberg Amendment to the original law expands its prohibitions to include misdemeanor convictions, and it is retroac-



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a judgment is a conviction that comes under the law. Since most cases are adjudicated by local civilian courts that don't publish their opinions for research purposes, the law of each community must be examined to determine qualification. For example, a "nolo contendere" plea to a charge of spousal abuse in a 1998 Georgia case was declared by the state's attorney general not to be a "conviction" for Lautenberg purposes. That opinion disposed of one particular case, but is not a precedent for hundreds of other cases throughout the nation, as each state makes its own determinations as to what constitutes a "conviction."

Compounding the matter are the various state provisions for handling first offenders, which may exclude a conviction under the Lautenberg Amendment.

The 1996 changes established by the Lautenberg Amendment prohibit military members with domestic-violence convictions from possessing firearms or ammunition, and from shipping, transporting, selling, or receiving any firearm or ammunition.

This means the soldier is denied the ability to qualify with a weapon or perform duties requiring a firearm — a condition that denies him or her the right to serve in nearly any career field available in the Army.

A commander must assign such soldiers to duties in which they do not come in contact with weapons, and the soldiers are not to be assigned overseas. The likely outcome of such restrictions is administrative elimination from the service.

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The Commander's Responsibility

Commanders who have information that reasonably indicates that a soldier may have a Lautenberg-qualifying conviction must forward that information to their local staff judge advocates to determine if, in fact, it fits under the law.

The Department of the Army has declared that commanders will not take adverse action against soldiers with misdemeanor convictions that occurred before the amendment was passed, if that action is based solely on the conviction. However, these soldiers' careers may still be adversely affected, because the soldiers are prohibited from deploying overseas and

from possessing or handling firearms or ammunition.

The adverse impact extends to prohibiting attendance at service schools where individual weapons instruction is part of the curriculum, and it may preclude re-enlistment.

Post-Lautenberg (after September 1996) convictions permit commanders to initiate bars to re-enlistment and processing for administrative discharges. But commanders must allow soldiers a reasonable time to seek expunction of the conviction, or a pardon.

This includes the opportunity to seek help from legal-assistance office attorneys. In one such case, the author of this article is representing an outstanding career NCO who has a 14-year-old simple assault conviction, not involving a firearm, resulting from an altercation started by his former spouse. The soldier is awaiting the results of his petition for pardon from the governor of North Carolina.

Take Preventive Measures

Domestic problems can lead to serious consequences when they result in violence. Even if there is no injury involved, such as if a soldier slaps a spouse, the attack could lead to a conviction for simple assault — even if there is no weapon involved and the soldier does not receive a jail sentence.

Most clients fail to recognize the potential career-ending consequences of a push or shove during a moment of anger with a family member.

The framers of the amendment justify the law as an effort to keep firearms out of the hands of those likely to use them during domestic disputes. Unfortunately, their approach did not address the reality that military firearms are not freely available to soldiers in their homes and there is no apparent history of military firearms being used to commit domestic violence.

Nonetheless, Congress is not likely to change or repeal the amendment any time soon. Therefore, soldiers and their family members are strongly encouraged to recognize the signs of problems at home and to seek help in avoiding confrontations that may result in domestic abuse or assault, which in turn may lead to a family violence conviction that will adversely impact upon a military career and future employment opportunities. □

